Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

REPLY COMMENTS OF VERIZON

Michael E. Glover

Of Counsel

Edward Shakin
Ann Rakestraw
1515 North Courthouse Road
Suite 500
Arlington, VA 22201
(703) 351-3174
ann.h.rakestraw@verizon.com

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CONTENTS

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Introduction and Summary

In response to the proposals for reform offered by State Members of the Federal-State Joint Board on Universal Service ("Joint Board"), commenters have again highlighted the troubling (and continued) escalation in the size of the high cost fund. The Joint Board should cap the size of the rural fund, and recommend specific actions to control the future growth to ensure that the fund will remain viable and carriers will receive sufficient and predictable support going forward in those instances where it is truly needed. Specifically, the Joint Board should recommend the elimination of unwarranted funding to duplicative networks in the high cost communities, and reject calls to expand support to new areas, such as broadband service, which is already being deployed in rural areas without the need for universal service support. Lastly, the Joint Board should recommend that the Commission quickly transition all carriers with more than 100,000 lines from the rural fund to the more appropriate non-rural mechanism.

Some parties resist efforts to control the fund size, arguing that a capped fund would not provide "sufficient" support. The threshold question, however, is sufficient for what purpose? Those carriers opposing a cap often are the same ones arguing for a broad (and unnecessary) expansion of high cost support to fund broadband deployment, or multiple networks in high cost areas. The Joint Board should reject efforts to make the high cost fund try to do too many things for too many carriers. If high cost support is limited to only that amount that is necessary to meet the core goals of the Act – namely, to ensure that customers in rural areas have access to services reasonably comparable to those available in urban areas, at reasonably comparable rates – the high cost fund can be capped at levels below current funding, and still provide "sufficient" support. If, however, high cost dollars are spread too thin, the fund either will not be sufficient to support these core principles, or will be so large that it risks making the size of the fund unsustainable.

I. THE RAPID GROWTH IN THE HIGH COST FUND RISKS UNDERMINING THE SHORT-TERM AND LONG-TERM VIABILITY OF THE HIGH COST PROGRAM.

Rural LECs and wireless providers both recognize the need for reform of the universal service fund and the clear strain under which the fund operates, yet cast blame squarely on each other. Wireless providers focus on the growing level of support provided to rural LECs, which they assert is higher than necessary and leads to inefficient investment. CTIA found that "[b]etween 2000 and 2004, the national average loop cost for rural incumbent LECs grew from approximately $337 per loop per month to approximately $378 per loop per month."[1] By contrast, OPASTCO and other rural ILECs point to the rising levels of support provided in the

[1] *See* Comments of CTIA – The Wireless Association, CC Docket No. 96-45, at 5 (filed Sept. 30, 2005) ("CTIA Comments").

last year to eligible telecommunications carriers ("ETCs") other than the incumbent LEC.[2] Chairman Kevin Martin has identified the growth in funding to these carriers – from about $1.5 million per year in 2000 to roughly $333 million per year today – as "one of the primary drivers of fund growth."[3]

In short, both rural LECs and ETCs have identified significant sources of high cost fund growth. Qwest highlights that "seven out of every ten dollars in federal high cost support is distributed to" areas served by rural telephone companies, and that this "massive" undertaking has resulted in a "broken" high cost fund.[4] In all, the total high cost fund has tripled in the past decade from approximately $1.1 billion in 1995 to $3.66 billion in 2005, with new funding provided to ETCs that is largely not offset by reductions in support to LECs. *See* Federal Communications Commission, Wireline Comp. Bur., Industry Analysis & Technology Div., Trends in Telephone Service, at Table 19.3 (Apr. 2005) ("*Trends in Telephone Service*"). Such dramatic growth far eclipses any objective economic indices, even taking into account the establishment of explicit interstate access support mechanisms[5] during that time period.

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[2] *See* Comments of OPASTCO, CC Docket No. 96-45, at iv, 14-19 (filed Sept. 30, 2005) ("OPASTCO Comments"); *see also* Comments of FairPoint, CC Docket No. 96-45, at 5 (filed Sept. 30, 2005) ("FairPoint Comments"); Comments of CenturyTel, CC Docket No. 96-45, at 3 (filed Sept. 30, 2005) ("CenturyTel Comments").

[3] *See* Remarks of FCC Chairman Kevin J. Martin, TELECOM 05 Conference, United States Telecom Association, Las Vegas, NV, at 4 (Oct. 26, 2005) ("Chairman Martin's October 2005 Speech") *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-261868A1.pdf.

[4] *See* Comments of Qwest Communications International Inc., CC Docket No. 96-45, at ii, 8 (filed Sept. 30, 2005) ("Qwest Comments").

[5] Much of the growth was due to the addition of support for interstate common line support ("ICLS") and interstate access support ("IAS"), both which began after 1995. Together, these portions of the program are projected to cost almost $ 1.726 billion in 2005. *See Trends in Telephone Service,* Table 19.3.

Outside analysts agree that, in light of the overall stress on the program, "[f]undamental concerns about USF viability remain."[6] The extent of the challenges facing the high cost program requires a prompt and comprehensive approach to reform. To that end, the *Referral Order* specifically directs the Joint Board to "undertake a review of what measures should succeed the [Rural Task Force] plan and, more generally how the rural and non-rural high cost support mechanisms function together." *Federal-State Joint Board on Universal Service,* Order, 19 FCC Rcd 11538, 11541, ¶ 7 (2004) ("*Referral Order*").

Thus, the Joint Board's mandate does not allow it to postpone or delay action regarding high cost reform pending action in other proceedings, as some commenters have suggested.[7] Nor should it. Broadening the base of universal service contributions, for example, may help spread the cost of the fund, but it does not alleviate the problem of growing costs. As one analyst noted, "[a]lthough the costs of providing telephone service have fallen significantly over time, [universal service fund] spending has increased from $15 per household in 1993 to $52 per household in 2003."[8] Although broadening the contribution base can go a long way toward

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[6] Legg Mason, *Universal Service Financial Analysis and Rural Regulatory Review,* at 6 (June 9, 2005). *See also* Digital Age Communications Act: Preliminary Proposal of the Universal Service Working Group, Progress and Freedom Foundation (October 2005), available at http://www.pff.org/issues-pubs/books/051024DACAUSF1.pdf ("*Progress and Freedom Foundation Report*").

[7] Commenters suggest the need for action in the universal service contribution methodology proceeding (Comments of Frontier and Citizens ILECS, CC Docket No. 96-45, at 3 (filed Sept. 30, 2005) ("Frontier Comments"); CenturyTel Comments, at 4; FairPoint Comments, at 8; Comments of USTA, CC Docket No. 96-45, at 2-3 (filed Sept. 30, 2005) ("USTA Comments"); the *Qwest II* remand proceeding (Comments of SBC, CC Docket No. 96-45, at 4 (filed Sept. 30, 2005) ("SBC Comments"); General Communication Inc., CC Docket No. 96-45 (filed on Sept. 30, 2005) ("GCI Comments"); as well as the intercarrier compensation proceeding. (AT&T Comments, CC Docket No. 96-45, at 2, (filed Sept. 30, 2005) ("AT&T Comments"); Frontier Comments, at 12).

[8] *See Progress and Freedom Foundation Report,* at 9-10 (footnotes omitted).

alleviating inequities among contributors that are present in the current system, it does nothing to reduce the end cost to consumers. In other words, the $50-plus dollars per year (and growing) cost per consumer remains the same, whether the consumer pays for 100% of that cost through services ordered from one carrier, or through separate line item assessments or rate increases on different bills. In addition, to the extent proposals in the intercarrier compensation proceeding advocate moving more support to the universal service fund, this only exacerbates the problem of fund growth. Regardless of the actions taken in other proceedings, the Joint Board should give the Commission specific options for addressing the separate problem of controlling growth in the high cost fund.

II. THE LONG-TERM VIABILITY OF THE HIGH COST FUND REQUIRES A RETURN TO CORE PRINCIPLES.

To ensure that funding remains at sufficient and predictable levels, and the overall universal service fund remains sustainable, the Commission should focus the high cost fund on the continued delivery of affordable telecommunications service to all Americans, and eliminate any unnecessary strains on the fund. Several commenters focus upon the proper administrator of the universal service fund – *i.e.,* state block grant proposals – while largely sidestepping the most vital components of any successful reform: a workable cap to ensure sufficient (but not unnecessary or excessive) funding; elimination of duplicative support; and reorganization of the rural program to ensure equitable and efficient results.

1. The Commission should freeze per-line support for all carriers under the rural mechanism at current funding levels to provide more appropriate investment signals to rural carriers and to check further growth in the fund. Absent direct efforts to stabilize the fund, the viability of the fund, the affordability of end user contributions, and, in turn, the predictably of

support to high cost carriers will be at considerable risk. Citing the need to control excessive growth, a number of commenters concur that a per-line freeze or cap on fund growth must be adopted.[9]

Many rural carriers have reflexively opposed any caps or limits on growth in the rural fund since prior to the *Rural Task Force Order,*[10] even though there is no evidence that a per-line freeze at current levels (adjusted annually by an indexed factor) would raise any sufficiency concerns or would adversely affect investment decisions.[11] By focusing on speculative concerns, these carriers fail to properly balance the sufficiency goal under Section 254 with the other equally important principles underlying the universal service program, including affordability. *Qwest v. FCC,* 398 F.3d, 1222, 1234 (10th Cir. 2005) ("*Qwest II*") (rejecting the Commission's definition of "sufficiency" because "[w]e are troubled by the Commission's seeming suggestion that other [Section 254 universal service] principles, including affordability, do not underlie federal non-rural support mechanisms").

Moreover, the statutory language regarding "sufficient" support does not state that every *carrier* should receive what it believes to be a sufficient amount; rather, it states that "[t]here should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance *universal service*." 47 U.S.C. § 254(b)(5) (emphasis added). In other words, the

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[9] *See*, *e.g.,* Qwest Comments, at 12 (suggesting a funding cap at 2004 levels rolling back approximately $200 million in growth this year); GCI Comments, at 16 (freeze upon competitive entry); AT&T Comments, at 3 (freeze upon competitive entry); Comments of Sprint Nextel, CC Docket No. 96-45, at 8-9 (filed Sept. 30, 2005) (freeze upon competitive entry); CTIA Comments, at iii.

[10] *Federal-State Joint Board on Universal Service*, 16 FCC Rcd 11244 (2001) ("*Rural Task Force Order*").

[11] *See* FairPoint Comments, at 9, OPASTCO Comments, at 4; CenturyTel Comments, at 3.

question is not what amount of support is "sufficient" in the eyes of one or multiple carriers in high cost areas; rather, it is what amount is necessary to ensure that customers in high cost areas have access to reasonably comparable services at reasonably comparable prices as their urban counterparts. Particularly when the Commission can act to remove support that is not necessary, such as that provided to fund duplicative networks, there is no evidence that a capped fund would not be sufficient to meet these goals.

2. The Joint Board should recommend eliminating support to duplicative networks in high cost areas.[12] The subsidization of multiple carriers, rather than basic infrastructure, is counter to the basic principles underlying the universal service program. It is well-established that under the current system, the designating of an additional ETC creates a ripple effect in the fund as significant per-line support flows to the new entrant, while the incumbent provider's support is essentially unaffected.[13] As Chairman Martin has noted on many occasions, it simply is not "viable in the long term to continue subsidizing multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier."[14]

3. The Joint Board should recommend that all mid-sized and large carriers serving over 100,000 lines in a state receive support under the non-rural mechanism. As an initial step, all commonly owned study areas within a state should be combined to correct for anomalous results

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[12] *See, e.g.,* Qwest Comments, at 13 (supporting limiting support to one connection per ETC per household).

[13] *Rural Task Force Order,* 16 FCC Rcd, at 11294-5, ¶ 125; *Virginia Cellular/Highland Cellular Order,* Report and Order, 20 FCC Rcd 6371, 6395, ¶ 55 (2005) ("If the per-line support level is high enough, the state may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the universal service fund.").

[14] Chairman Martin's October 2005 Speech, at 4.

under current rules in which similarly situated carriers are regulated in a different manner based upon the timing of acquisitions, contrary to the Commission's study area freeze.[15] Perhaps not surprisingly, some carriers – particularly those that would receive less funding under this proposal – object. However, the arguments they raise against the plan fall short. For example, some object to the assertion that combining study areas would "result in the recognition of efficiencies of scale and scope actually enjoyed by each carrier,"[16] based on the argument that these economies of scale are already reflected in the reportable costs used by the rural mechanism.[17] However, even if that fact is true, it is beside the point. The question at hand is not whether these amount of support these carriers are receiving under the rural mechanism is being calculated properly; rather, it is whether, given the size of the carrier's operations in the state, it is more analogous to the carriers receiving support under the non-rural mechanism than the small, rural carriers the rural fund was designed to support.

These carriers also incorrectly attempt to rely upon the Act's definition of rural telephone company and the findings of the Rural Task Force to argue that "rural telephone companies," as defined by the Act, must receive funding under the rural mechanism.[18] However, nothing in the Act requires that universal service support be divided into separate non-rural and rural funds, or

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[15] *See* Comments of Verizon, CC Docket No. 96-45, at 14-15 (filed Sept. 30, 2005) ("Verizon Comments").

[16] *See* CenturyTel Comments, at 17 (quoting Public Notice, at 9); *see also* Comments of Balhoff & Rowe, LLC, CC Docket No. 96-45, at 42-43 (filed Sept. 30, 2005) ("Balhoff & Rowe Comments"); FairPoint Comments, at 10-11; Comments of TDS Telecom, CC Docket No. 96-45, at 11-13 (filed Sept. 30, 2005) ("TDS Comments").

[17] *See* FairPoint Comments, at 10; CenturyTel Comments, at 17; USTA Comments, at 5; Frontier Comments, at 4.

[18] *See* Comments of WTA/ITTA, CC Docket No. 96-45, at 24 (filed Sept. 30, 2005) ("WTA/ITTA Comments"); FairPoint Comments, at 11.

that carriers receive specific levels of support based on whether they meet the definition of "rural telephone company" set forth elsewhere in the Act. The Joint Board has explicitly found that there is "no statutory requirements that the Commission use the Act's definition of rural telephone company for high cost universal service purposes."[19] Similarly, the Rural Task Force found significant differences amongst rural telephone companies based upon the carrier size – concluding that "some rural companies may be more similar to non-rural companies than to smaller rural companies." *Rural Task Force Order,* 16 FCC Rcd at 11311, ¶ 172.[20] As demonstrated in detail earlier in this proceeding, it is not appropriate to include carriers with more than 100,000 lines in the rural support mechanism. Verizon 2004 Comments, at 8-14.

Finally, some carriers argue that requiring them to combine study areas for purposes of determining which support mechanism applies is not be appropriate, because a carrier with multiple study areas may be charging different rates and combining study areas "would create a disconnect between rates and supported costs, potentially leading to the kind of implicit subsidies the FCC has been trying to eliminate."[21] However, providing universal service based on costs averaged throughout the state does not make a subsidy "implicit" any more than would providing support based on the current study area size. All current rates and high cost loop mechanisms are based on averaging costs across a geographic area. The question is not about implicit subsidies,

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19 *Federal-State Joint Board on Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support,* Public Notice, 19 FCC Rcd 16083, ¶ 9 (2004); Comments of Verizon, CC Docket No. 96-45, at 9 (filed Oct. 15, 2004) ("Verizon 2004 Comments").

20 This also directly contradicts the claim that "size of the carrier serving a rural study area in no way changes the characteristics of that study area." CenturyTel Comments, at 14; Frontier Comments, at 7.

21 *See* CenturyTel Comments, at 16. *See also* FairPoint Comments, at 10; WTA/ITTA Comments, at 24-25.

but rather whether the geographic area of averaging makes sense from an economic and regulatory perspective. The "implicit" versus "explicit" nature of support is based on whether hidden subsidies are funding a service, not on the mechanism for distribution. Moreover, requiring carriers to consolidate study areas for purposes of determining what mechanism of support they will receive would not prevent them from continuing to disaggregate study areas and target support to their highest cost exchanges, pursuant to Commission rules. *See* 47 C.F.R. § 54.315.

III. COMPETITIVE FORCES AND FURTHER DEREGULATION SHOULD DRIVE BROADBAND DEPLOYMENT AND DEVELOPMENT.

The Joint Board should not recommend the further expansion of the universal service fund to offset the costs of broadband and advanced services deployment in rural areas.[22] Broadband services have been deployed throughout the nation in a deregulatory environment without universal service support, and existing governmental programs are readily available to fill in any potential funding gaps. What is more, due to the significant financial consequences, as well as other regulatory hurdles, the Commission – only two years ago – explicitly ruled that broadband and advanced services should not be supported under the universal service program.[23] There is no foundation to revisit that determination.

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[22] CenturyTel Comments, at 12 ("If advanced broadband capabilities are to be affordable to rural consumers, as required by the Communications Act, sufficient funding must be provided to cover the cost drivers for rural service."); FairPoint Comments, at 5 ("need to incent investment in rural infrastructure that will bring greater access to broadband services.").

[23] *See Federal-State Joint Board on Universal Service,* Order and Order on Reconsideration, 18 FCC Rcd 15090, 15093-95, ¶¶ 8, 11 (2003) ("[i]f advanced or high-speed services were added to the list of supported services, it could drastically increase the financial burden placed on carriers and, ultimately, consumers").

Industry data corroborate that broadband is a noteworthy deregulatory success story. Importantly, this deployment is occurring in both urban and rural communities. NTCA stresses that "[r]ural ILECs are making good on their promise to deliver broadband services."[24] Last month, NTCA released a member survey that revealed that 92 percent of NTCA members provide broadband services, and that 85 percent of NTCA members face competition from other broadband providers.[25] OPASTCO concurs that rural carriers provide "broadband access to an average 85 percent of their customers, with some companies offering broadband access to 100 percent of their customers."[26] These statistics do not even fully capture the deployment in rural areas of the industry leader, cable modem service, or other broadband providers, *e.g.,* wireless and satellite services. Thus, there is no evidence that the market for broadband Internet access has failed to develop absent universal service funding.

Further, there is no evidence to support claims that broadband deployment by rural carriers would suffer without access to universal service support. Indeed, in a survey of rural carriers, "eighty six percent of [NTCA] survey respondents classified the process of obtaining financing for broadband projects as fairly to moderately easy." *NTCA Survey* at 11. Existing governmental efforts to foster rural broadband deployment are more than sufficient.[27] For

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[24] *See* Comments of National Telecommunications Cooperative Association, CC Docket No. 96-45, at 6 (filed Sept. 30, 2005) ("NTCA Comments").

[25] NTCA 2005 Broadband/Internet Availability Survey Report, at 3-4 (September 2005) ("NTCA Survey") available at http://www.ntca.org/content_documents/2005NTCABroadbandSurveyReport.pdf.

[26] Letter from John N. Rose, OPASTCO to Washington Post (May 23, 2005), available at http://www.opastco.org/docs/052305Broadband%20Crawling%20Its%20Way%20to%20Exurbs.pdf.

[27] *See* USDA Rural Broadband Access Loans and Loan Guarantees Program (Feb. 28, 2005), available at

instance, Chairman Kevin Martin has highlighted the success of the Joint Federal Rural Wireless Outreach Initiative.[28] Broad access to capital, nationwide deployment, and rapidly increasing penetration rates demonstrate that there is no need for new federal programs financed by all subscribers to telecommunication services in both urban and rural America.

The national goal of ubiquitous and affordable broadband access by 2007 does not require affirmative governmental funding and support mechanisms. To the contrary, President George W. Bush has explained that the "proper role for the government is to clear regulatory hurdles so those who are going to make investments do so. Broadband is going to spread because it's going to make sense for private sector companies to spread it so long as the regulatory burden in reduced."[29] Consistent with the President's message, the Commission has acted to reduce the regulatory burden on LEC-provided broadband services in the *Triennial Review* process as well as in the recent DSL Title I decision.[30] Other broadband providers have always benefited from a minimal regulatory approach: Comcast has stressed that the "Commission should remain committed to rely to the greatest extent feasible on the power of

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http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/05-4241.htm.

[28] Remarks by FCC Chairman Kevin Martin, Bucks for Broadband Summit, at 30 (Jan. 12, 2005), available at http://www.fcc.gov/commissioners/martin/documents/summit011205.pdf.

[29] Remarks by President George W. Bush at American Association of Community Colleges Annual Convention, Minneapolis Convention Center Minneapolis, Minnesota (April 26, 2004) *available at* http://www.whitehouse.gov/news/releases/2004/04/20040426-6.html.

[30] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities,* Report and Order and Notice of Proposed Rulemaking, FCC 05-150 (Sept. 23, 2005) ("*DSL Order*"); *Unbundled Access to Network Elements*, Order on Remand, 20 FCC Rcd 2533 (2005); *see also* Chairman Martin's October 26, 2005 Speech, at 1-2 (outlining actions the Commission has taken to "level[ ] the competitive playing field between different types of providers").

robust, intermodal, facilities-based competition." Reply Comments of Comcast, GN 04-54, at 1 (filed May 24, 2004).

Indeed, not only is direct universal service funding for broadband unnecessary, but it could affirmatively harm universal service goals by inhibiting investment by non-supported broadband providers, and greatly increasing the size of the universal service fund. As an initial matter, any universal service support for broadband would only go to carriers that are designated as ETCs in the relevant study area. However, there is no public policy reason to subsidize only one player in the broadband game, when the market for such services already is highly competitive. As the Commission has recognized, "residential high-speed access to the Internet is evolving over multiple electronic platforms, including wireline, cable, terrestrial wireless and satellite."[31] Thus, while in the past "the primary, if not sole, facilities-based platform available for the provision of 'information services' to consumers was in incumbent local exchange carrier's (incumbent LEC's) telephone network," currently, "the broadband Internet access market today is characterized by several emerging platforms and providers, both intermodal and intramodal, in most areas of the country."[32] The Commission has been diligently working to remove inconsistent regulations that create disadvantages to telecommunications carriers, so that they can have a neutral playing field to compete against other providers of broadband service.[33] It would completely counteract the deregulatory and neutral broadband playing field that the

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[31] *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, 17 FCC Rcd 4798, 4802, ¶ 6 (2002).

[32] *DSL Order,* ¶ 3. *See also id*., ¶¶ 47-73 (discussing the broadband marketplace and technological innovation).

[33] *See id*., ¶ 1 (describing actions to eliminate regulations and "establish a new regulatory framework" creating a "minimal regulatory environment for wireline broadband Internet access services to benefit American consumers and promote innovative and efficient communications").

Commission has been working to establish if the Joint Board were to recommend subsidies that are provided to only one small segment of the broadband market. The precise problems created by the imposition of disproportionate burdens on one class of providers – and the effects they create on the market's operation, the investment patterns of provider, and promotion of inefficient entry and investment – are equally present in the corollary situation where only one of several competing providers is offered a financial benefit.

Moreover, although no one has adequately calculated the cost of providing funding to rural carriers to cover the costs of their broadband deployment, but it easily could become enormous. This would further risk the long-term viability of fund, and could raise affordability concerns as end-user customer's universal service obligation would rise still further. *See Alenco v. FCC,* 201 F.3d 608, 620 (5th Cir. 2000). In addition, by imposing more and more costs on consumers, an ironic side effect of providing universal service support to rural broadband carriers may be to encourage the Commission to assess universal service contribution obligations on all broadband services, in order to "broaden the base" – *i.e.,* spread the cost – of such expenditures – thus making broadband more expensive for consumers across the country. As Verizon has explained in the contribution proceeding, the Commission should not assess universal service contributions on broadband services, particularly if customers using those services already will be paying a telephone number-based assessment on voice services traveling over the broadband platform.[34] The Joint Board should not recommend a broad expansion of high cost fund expenditures that would make such an assessment more likely.

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[34] *See* Letter from Kathleen Grillo, Verizon, to Marlene H. Dortch, CC Docket 96-45, attachment at 7 (filed July 18, 2005).

IV. CONCLUSION

For the foregoing reasons, the Joint Board should recommend specific means to control future growth of the high cost fund, and reject efforts to further expand the rural fund to support broadband deployment.

Respectfully submitted,

THE VERIZON TELEPHONE COMPANIES

By: *_/s/ Ann Rakestraw_*

Michael E. Glover
Of Counsel

Edward Shakin
Ann Rakestraw
VERIZON
1515 N. Court House Road
Suite 500
Arlington, VA 22201-2909
(703) 351-3174

COUNSEL FOR VERIZON

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